IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

Crl.Rev.Pet.No. 2706 of 2007()

CRA.460/2000 of ADDL. SESSIONS COURT (ADHOC)-II, TRIVANDRUM
ST.1100/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, NEDUMANGAD

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REVN. PETITIONER: APPELLANT/ACCUSED:

J.SURAN, S/O.JOSHAW, CHIRAPURATHU VEEDU, MITHRANIKETHAN P.O., VELLANADU, NEDUMANGADU, THIRUVANANTHAPURAM.

BY ADV. SRI.THIRUMALA P.K.MANI

RESPONDENTS: COMPLAINANT AND STATE:

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1. BADARASAMAN, S/O.M.PEERUMOHAMMED, KOLLAMKONATHU VEEDU, MUNDELA P.O., VELLANADU, NEDUMANGADU.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.2706 of 2007

Dated this the 13th day of February, 2007

ORDER

Revision petitioners are the accused 1 to 4 in C.C. 774/2003 who stands convicted for the following offences i.e, to undergo R.I. for six months each for the offence under Section 324 of IPC and to undergo R.I. for two years and to pay fine of Rs.3,000/- each for the offence under Section 326 of IPC and in default, to undergo simple imprisonment for a period of three months. The contention of the revision petitioners is that the alleged weapons have not been recovered and that there is no evidence with respect to the size and nature of the weapons used i.e, stones and sticks and hence the offence under Section 326 would not lie.

2. The petitioners have also filed a compounding petition signed by both sides as well as their respective counsel. It is mentioned therein that the offence would only lie under Sections 324 and 325 read with 34 of IPC as there is no evidence as the details of the weapons used. Counsel for the revision petitioners

relied on the decision reported in Mathai vs. State of Kerala (2005(3) SCC 260) wherein Supreme Court has held that as the nature of the weapon whether it is an instrument which, used as a weapon of offence, is likely to cause death as contemplated in Section 326 IPC has to be gauged from various facts like weapon's size, sharpness etc. and the court in the above case held that the offence under Section 326 is not attracted and only Section 325 would be applicable. At the instant case, it is seen from the judgment of the courts below that the weapons used were not recovered and there is no evidence as to the size etc. of the weapons. In the circumstances, the ratio of the supreme court decision is squarely attracted. The charge would only lie under Section 324 and 325 IPC alone. The same are compoundable. The application for compounding is allowed. The accused shall stand acquitted.

The criminal revision petition is allowed as indicated above.

K.R.UDAYABHANU,
JUDGE

csl

M.SASIDHARAN NAMBIAR, J

S.A.No.709 of 1996

JUDGMENT

1st February, 2007